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BY HAND DELIVERY

Hon. George B. Daniels
United States District Judge
United States District Court
for the Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Re: Sokolow, et al. v. Palestinian Liberation Organization, et al.,

Docket No. 04-CV-397 (GBD)(RLE)

Dear Judge Daniels:

This firm represents plaintiffs in the above-referenced action. We write in response to defendants' letter of March 14, 2014, which asks the Court to keep secret a document that they produced to the plaintiffs.

That document is a letter to	dated	from
		The letter
<u> </u>		See Ex. A (English
translation).	Hashaika and Shawi	sh carried out a suicide
bombing that gravely injured the Ba	uer plaintiffs.	
	-	
The letter is highly relevant b	because, among other things, i	t shows that high-ranking
representatives of the defendants—		
		It leaves no doubt as to

Plaintiffs plan to submit the letter to the Court in opposition to defendants' motion for reconsideration on the issue of personal jurisdiction; to Judge Ellis in support of plaintiffs'

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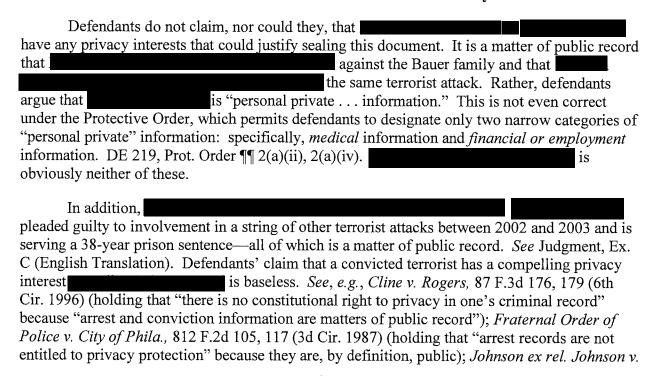
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pending motion for sanctions for violations of Judge Ellis' orders to produce documents from the GIS; and, ultimately, to the jury.

Defendants must carry a heavy burden to justify concealing this document from public scrutiny. Defendants have already been warned that the Court "is a public courthouse that resolves public issues in public, not behind closed doors," and that absent a "compelling legal argument" for confidentiality, the presumption in this case is that "all documents in this case will be publicly filed" Mar. 4, 2014 Tr., Ex. B, at 49-50. As the Second Circuit has cautioned, under the First Amendment, "continued sealing of [] documents may be justified only with specific, on-the-record findings that sealing is necessary to preserve higher values and only if the sealing order is narrowly tailored to achieve that aim." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 124 (2d Cir. 2006).

Defendants make four arguments for concealing the letter: (1) the alleged privacy rights of (2) the alleged need to protect the PA's law enforcement and intelligence concerns; (3) a "blocking statute" enacted by the PA after the attacks at issue in this case; and (4) the pending motion for reconsideration on the issue of personal jurisdiction. Each is meritless.

A. The Individuals Named In The Letter Have No Privacy Interests



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Columbia Univ., No. 99 Civ. 3415, 2003 WL 22743675, at *11 (S.D.N.Y. Nov. 19, 2003) ("[C]ourts have held that the right of confidentiality does not prohibit the disclosure of an individual's criminal history, including the individual's arrest records.") (collecting cases).

Defendants' "Law Enforcement Interest" Does Not Bar Public Access В.

Defendants assert that the letter should be	kept secret because it "reflects protected law		
enforcement information" and "GIS investigative			
2014, at 2. This claim cannot be taken seriously.	The letter		
	It does not even come close to		
revealing any investigative techniques. Nor does	it reveal the names of any confidential		
informants or	In fact, the only law enforcement		
"method" that the letter reveals is that	The timing of the letter—		
	l—is evidence		
of the opposite of law enforcement. Defendants'	claim that public disclosure of the letter will		
somehow compromise GIS law enforcement activities is frivolous. ¹			

C. **Defendants' Blocking Statute Is Irrelevant**

Defendants assert that the letter should be concealed out of deference to a PA statute, which, defendants claim prohibits public revelation of information regarding GIS activities. This statute is irrelevant. Defendants previously argued to Judge Ellis that this statute prevented them from producing the GIS documents, and he rejected that claim. Defendants did not timely object to Judge Ellis's ruling, so they have waived their "blocking statute" protections.² This "blocking statute" is irrelevant to the issue of whether, now that the document has been produced, it must be submitted only under seal. A self-serving statute that purports to allow the PA to conceal

¹ Defendants rely on an old declaration from a PA official that they previously submitted to Judge Ellis in an effort to avoid the production of any GIS documents on the ground that doing so would interfere with GIS law enforcement activities. Judge Ellis rejected this claim and ordered the documents produced. The declaration does not even mention the letter at issue. Indeed, the declaration is nothing more than a conclusory statement that any disclosure of GIS documents would create such an interference, and it does not even attempt to explain why that would ever be so.

² Other decisions in this district have also held that foreign non-disclosure statutes could not justify withholding documents in cases under the Anti-Terrorism Act. See, e.g., Wultz v. Bank of China, 942 F. Supp. 2d 452, 466-68 (S.D.N.Y. 2013); Strauss v. Credit Lyonnais, S.A., 249 F.R.D. 429, 443-47 (E.D.N.Y. 2008). This is particularly true given that the defendants are not sovereigns. See, e.g., Klinghoffer v. SNC Achille Lauro, 937 F. 2d 44, 47-49 (2d Cir. 1991).

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information showing that

cannot possibly constitute the kind of a "compelling legal argument" that this Court has stated is necessary to overcome the presumption that "all documents in this case will be publicly filed[.]"

Second Circuit Precedent Does Not Permit Reservation Of A Decision On D. **Public Disclosure**

Defendants argue that the Court should seal the letter pending its decision on defendants' pending motion for reconsideration on personal jurisdiction. This argument has consistently been rejected by the Second Circuit. See, e.g., Lugosch, 435 F.3d at 126-27 (finding district court erred in reserving confidentiality determinations until after ruling on underlying summary judgment motion); Joy v. North, 692 F.2d 880, 893 (2d Cir. 1982) (requiring disclosure of documents considered on a dispositive motion because "[a]n adjudication is a formal act of government, the basis of which should, absent exceptional circumstances, be subject to public scrutiny.").

For the foregoing reasons, this Court should reject defendants' claims and allow the letter at issue to be filed publicly.

Respectfully,

Kent A. Malonitz Ctr

Kent A. Yalowitz

All ECF Counsel cc: